IN THE COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE JURISDICTION

WRIT PETITION (L) NO. 12 OF 2007

Kum.Kiran Jaisingh Sakapl ...Petitioners

vs.

The State of Maharashtra & Ors. ...Respondents

Mr.Abhijeet Rane i/by.M/s.A.Rane & Associates
for the petitioner.

Mr.P.G.Sawant, AGP for respondent no.1.

Mr.Rui Rodrigues for respondent no.2.

Mr.Ajit Kenjale for respondent no.3.

CORAM: J.N.PATEL, J. And
S.C.DHARMADHIKARI, J.

DATE ; 15TH FEBRUARY, 2007.

P.C :-

1. Rule. Returnable forthwith.

2. Heard learned Counsel for the parties.

3. The petition can be disposed off at the stage of admission itself. The petitioner is prosecuting his studies in Bachelor of Law degree for which examination is conducted by the University of Mumbai. He is a student of New Law College. The course in which the petitioner is preparing for his LLB examination is conducted by Semester system. It is the case of the Petitioner, that he appeared for First Term, the result of which was announced on 27.1.2005 in which he was declared fail in Contract-I paper having scored only 23 marks. Thereafter the Petitioner appeared for Second Term examination in April 2005 in which he was declared as fail in Constitutional Law paper on 18.7.2005. But as per the scheme, he was allowed to appear in the examination of Constitutional paper. He passed in all subjects of L.L.B. First Year in April 2006 of which result was declared on 10.7.2006. Thereafter the Petitioner was found eligible for taking admission in Second Year L.L.B. course in June 2005. It is the case of the petitioner, that in May 2006 he appeared for K.T. examination of

Contract-I of which results were declared on 7.7.2006. By that time he had already taken admission for Second Year of L.L.B. course. It appears that subsequently the Petitioner in Second Year of L.L.B. (III) Term examination, failed in the paper Administrative Law scoring 35 marks and paper of Transfer of Property Act and Easement Act scoring 34 marks by result declared on 9.2.2006. Thereafter, the petitioner in April, 2006 appeared for his Second Year of L.L.B. (semester-IV) (revision course) term examination, and was declared as failed on 15.7.2006 only in the paper of Land Laws scoring 28 marks. He was allowed to appear for Second Year of L.L.B.(III) Terms (K.T.) examination and was declared failed in Transfer of Property Act and Easement Act paper but again failed in Administrative Law scoring 38 marks for which the Petitioner applied to the University for revaluation on 4.9.2006. The Petitioner was declared successful in the revaluation done by the University, by communication dated 30.11.2006, i.e. after almost six months. Thereafter as the Petitioner did not clear the paper in due time, he was not allowed to appear for next term as he was

unable to take admission to the Third Year L.L.B. before the cut of date.

4. It is the case of the petitioner, that he has been attending the lectures being conducted for the next term i.e. L.L.B. Third Year and was allowed to Keep Term by the Principal of New Law College where the Petitioner is prosecuting his studies. It is the case of the Petitioner, that, he should now be permitted to appear for L.L.B.(III) Year, 5th and 6th Term alongwith practical examination as he has now cleared all papers of L.L.B. Second Year.

5. The Petitioner therefore seeks a direction from this Court to the Respondent herein to permit him to take admission in the Third Year of L.L.B. in the academic year 2006-2007 and be allowed to keep terms for the same and allowed to appear for examinations in April/May 2007 and also the Practical Training examination and has sought that the delay in taking admission be condoned on the ground that though the Petitioner was not permitted to enroll himself in L.L.B. Third Year course, he has been permitted by

the Principal of New Law College to attend classes and he has actually met the requirement of the University of having the minimum percentage of attendance for the said course. It is submitted, that the Petitioner's admission got delayed for the reasons beyond his control as there was a delay in declaring the results of the revaluation sought by him in the paper of Administrative Law and therefore the Petitioner would loose his one academic year, if he is not permitted to appear for the Third Year of L.L.B.which is scheduled to be held in May-2007. In support of his contention, the Petitioner has tendered a copy of the communication addressed by the Principal of New Law College to his Advocate alongwith the Certificate to the effect that in the academic interest of such students pending the revaluation process, the College has allowed to attend the Lectures of their probable next academic year without charging any fees whatsoever from the students and the Petitioner was allowed to attend Lectures for 5th and 6th Semesters of the Third Year of three years L.L.B. course during the current academic year 2006-2007 and in pursuance thereof he

has been found to have been attending all the Lectures sine beginning of the Term.

6. Mr.Rodrigues, Learned Counsel appearing for the University, submits, that in so far as the contention of the Petitioner that the results of revaluation were delayed cannot be at dispute as the University could not get the revaluation done within the stipulated period. But that by itself, cannot be the reason to permit the Petitioner for being admitted to Third Year L.L.B. course as there is no authenticated record produced by the Petitioner to show that he was duly admitted for Third Year of L.L.B. course by his College and now that, it is February-2007, the Petitioner would not be able to comply with the requirement of minimal attendance to qualify for appearing for Fifth and Sixth Semester of L.L.B. course and therefore the relief sought for by the Petitioner cannot be granted.

7. We have given our anxious consideration to the case of the Petitioner. We find that it is not the Petitioner who can be solely held responsible for not

taking admission in the Third Year L.L.B. course for the very reason that the Petitioners result in revaluation were not declared within time. It is a well accepted principle that a person cannot be expected to perform an impossible Act, particularly, when it is beyond his control. The fault has to be shared by the University for delaying the revaluation of his paper in Administrative Law and now that the Petitioner has been successful and has been declared pass on revaluation, it will be unjust to deprive him of one academic year. We have no reason to disbelieve the Certificate issued by the Principal of New Law College which in its preface has given a justification for permitting the students to attend classes subject to regularising their admission through clearing the subjects, particularly which are under revaluation. It is in the larger interest of the students community. We take on record the letter received by the Petitioner's Advocate from the Principal of New Law College and the Certificate mark it 'X' collectively. Treating it as an exceptional case, we direct the College to regularise the admission of the Petitioner, with effect from the

commencement of the academic year 2006-2007 and permit him to appear for practical examination and submit his examination Form to the University, which the University shall accept.

8. In so far as the other relief in the petition challenging Claus 13(ii) of ordinance 237-A issued by the Respondent No.1 as ultra vires, unconstitutional, null and void and to quash the same is concerned, the Learned Counsel appearing for the University, submits that the same does not exist and is nonest.

. The Petition stands disposed off accordingly with no orders as to costs.

(J.N.PATEL, J)

(S.C.DHARMADHIKARI, J)